THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 24919 of 2006

O r d e r:

The award dated 08.03.2004, of the Labour Court, Visakhapatnam, in I.D. No. 86 of 2001, is called in question in this writ petition.

The petitioner was appointed as Conductor in the respondent-APSRTC on 16.02.1991. On 15.10.1999, while the petitioner was conducting the bus on the route Parvathipuram – Deruwada, a check was exercised, and the checking officials having found certain cash and ticket irregularities, issued charge memo to the petitioner. Subsequently, the respondent-APSRTC while placing the petitioner under suspension, issued charge sheet dated 31.10.1998. The petitioner submitted his explanation denying the charges framed against him. Dissatisfied with the same, an enquiry was conducted, and the Enquiry Officer, who conducted the enquiry into the charges leveled against the petitioner, submitted his report holding that the charges are proved. Based on the enquiry report, the 1st respondent, namely the Depot Manager issued notice calling upon the petitioner to show cause as to why he should not be removed from service. The petitioner submitted his explanation thereto. However, vide proceedings dated 01.09.1999, the 1st respondent removed the petitioner from service. Assailing the order of removal, the petitioner preferred appeal and review before the appellate and review authorities, which were rejected. Thereafter, he raised an industrial dispute in I.D. No. 86 of 2001 before the Labour Court, which by award dated 08.03.2004, dismissed the same, upholding the orders of the disciplinary authority, as confirmed by the appellate and review

authorities. Assailing the said award, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the petitioner did not commit any cash and ticket irregularities and due to break of punching machine spring the petitioner has issued unpunched tickets to the passengers. He submits that the checking officials, in fact, did not exercise any check. On noticing that unpunched tickets, the checking officials ought to have checked the bus cash, which they did not do. Without obtaining any spot explanation from the petitioner, they obtained the thumb impressions of the passengers on blank papers, and thereafter, compelled the petitioner to write on some papers to their dictation with false information, and manipulated the charge memo. He further submits that the charge memo was prepared and served on the petitioner after four days of the incident and the checking officials have not followed the procedure contemplated under law. He further submits that the Labour Court without properly appreciating the said facts erred in confirming the order passed by the disciplinary authority, as confirmed by the appellate and review authorities. At any rate, he contended that the punishment of removal from service imposed on the petitioner is disproportionate to the proved charges. He thus prayed that the impugned order be set aside and the petitioner be reinstated into service with full backwages.

The learned Standing Counsel for the respondent-APSRTC submitted that since the petitioner committed serious cash and ticket irregularities, and having regard to the fact that the charges leveled against the petitioner were held proved by the Enquiry Officer in the departmental enquiry, the disciplinary authority based on the enquiry report, imposed punishment of removal from service on the petitioner, which was confirmed in appeal and review as well as by the Labour

Court in I.D. Having regard to the nature of the proved charges, the punishment of removal from service, cannot be said to be disproportionate, warranting interference therewith by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner, and the learned Standing Counsel for respondent No.2-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are base on suspicion, conjectures or surmises or no reason. It is within these parameters, the award of the Labour Court has to be examined.

The petitioner, as can be seen from the award of the Labour Court, did not dispute the validity of the domestic enquiry proceedings. The petitioner was charge sheeted on ten charges, namely (1) he having collected requisite fare of Rs.5/- each from 26 individual passengers issued lower denomination tickets, which are unpunched, (2) he having collected the requisite fare of Rs.5/- from E.3 passengers issued lower denomination tickets, (3) he having collected the requisite fare of Rs.5/- from E.2 passengers issued lower denomination tickets, (4) he having collected the requisite fare of Rs.5/- from E.4 passengers re-issued the tickets, which were already issued and accounted in the same S.R., (5) he having shown the Rs.5/ denomination tickets from 175/074411 to 490 as sold and accounted in the S.R., physically available in his ticket tray without punching, (6) he having shown in the S.R. against stage Nos.8, 9 and 10 to the extent of

denominations ofRs.2.50, Rs.3.00, Rs.4.00 and Rs.5.00, left blank (not closed) as to the remaining denominations up to stage No.10, (7) he failed to mention the total number of passengers in the S.R. right from Kurupam to Deruwada the place of check, (8) he remitted the bus cash on 16.10.1998 at about 5.30 hours instead of on 15.10.1998 atabout 21.00 hours, (9) for having cheated the Tray Receiving/Cash ADC who are on duty on 16.10.1998 at the time of remittance of bus cash of the service in question, and (10) for having failed to sign on the charge memo. The charges leveled against the petitioner, were held proved in the departmental enquiry.

The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service, which was confirmed in appeal as well as review. The Labour Court, on re-appreciation of the entire evidence and material on record, found that the petitioner intentionally committed serious cash and ticket irregularities, and held that the punishment of removal from service imposed by the disciplinary authority is proportionate to the proved charges. The findings arrived at by the Labour Court being based on proper appreciation of the evidence on record, no interference is called for with the impugned award. Since the charges leveled against the petitioner stood proved in the departmental enquiry, and he having failed to point out any infirmity in the conduct of the departmental enquiry, now cannot be allowed to contend that his signatures were taken by the checking officials on blank papers and made him write to their dictations false information.

In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[1], the apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in

the place of the one arrived at by the domestic tribunal. On the question of quantum of punishment, the apex Court held as follows:

> Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.

In the instant case, the charges leveled against the petitioner stood proved in the enquiry, and having regard to the gravity and seriousness of the proved charges, the respondent-APSRTC having lost confidence in the petitioner, removed him from service. In such circumstances, I am of the considered opinion that no interference is called for with the impugned award passed by the Labour Court, which upheld the punishment of removal from service imposed on the petitioner by the disciplinary authority, as confirmed by the appellate and review authorities.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 20th December, 2006.
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[1] (2005) 3 SCC 254